IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12017 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

I.A. SHAIKH STATE TRANSPORT KARMACHARI UNION - Respondent(s)

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Appearance :

MRS FALGUNI D PATEL for Petitioner(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 18/01/2006

ORAL JUDGMENT

1. Heard learned Advocate, Ms.Falguni D. Patel, on behalf of petitioner and learned Advocate, Mr.K.M.Paul, appearing on behalf of respondent.

2. In the present petition, the petitioner -Corporation challenging award passed by Industrial Tribunal, Surat in Reference (IT) No.56 of 1998 dated 21st October,2002, wherein, Industrial Tribunal has set aside punishment order in respect to charge-sheet No.37 of 1995 of stoppage of five increments with cumulative effect and directed to petitioner to pay arrears of salary with consequential benefits and imposing Rs.2000/- costs against the petitioner.

3. Learned Advocate, Ms.F.D.Patel, submitted that Industrial Tribunal has committed gross error in setting aside the punishment order. She submitted that respondent workman has admitted the legality and validity of Inquiry vide Exh.10 purshish. Then, Industrial Tribunal should not have gone into merits of the matter and not to re-appreciate the evidence led in departmental inquiry. She further submitted that it is the

case of the accident of head-on collision between two vehicles and misconduct committed by respondent is apparently based on principle of *res-ipsa-locutor* and, therefore, Tribunal has committed gross error in setting aside punishment order. She also submitted that acquittal in criminal case is not relevant while deciding reference against punishment order. She also submitted that reporter who has collected the information and he was remained present at the time when the Panchnama was drawn, was a witness to the accident and, therefore, not to believe the evidence of reporter is also contrary to law. Therefore, in short, her submission is that Tribunal has committed gross error in setting aside punishment order. She also emphasizes that dispute raised belatedly and barred by delay of 2 years from the date of punishment order. Except that, no other submission made by learned Advocate, Ms.F.D.Patel.

4. Learned Advocate, Mr.K.M.Paul, supporting the decision given by Industrial Tribunal, submitted that reporter was not eye witness and punishing Authority before imposing punishment order already having opinion against respondent workman and similarly, Appellate Authority was also having opinion against respondent before deciding appeal of respondent. Therefore, basically, principles of natural justice has been violated by petitioner which was rightly considered by Tribunal and, therefore, according to him, no error committed by Tribunal which require interference by this Court under Article 227 of the Constitution of India.

5. I have considered the submissions made by both learned Advocates. I have also perused award passed by Industrial Tribunal, Surat. The punishment order is dated 28th July,1995. First Appeal was rejected by Appellate Tuthority. Then, respondent had preferred Second Appeal which also

rejected on 2nd August,1996. Then, respondent workman approached to Union and Union has raised industrial dispute which referred for adjudication on 11th July,1998. Therefore, contention which has been raised by Ms.F.D.Patel that there is a delay for raising industrial dispute cannot be accepted simply on the ground that there is no limitation provided under Section 10 for raising industrial dispute within some time. However, no submissions were made about delay by petitioner before Industrial Tribunal. Therefore, this contention is rejected. Respondent workman was working as a driver in petitioner Corporation. Accident occurred on 14th October,1994, wherein, respondent was on duty of route Vasanda – Dharampur. The accident occurred at Khanpur which was a fatal accident. Charge-sheet was served by Divisional Traffic Officer, Valsad on 28th February,1995. Therefore, departmental inquiry was conducted, wherein, reporter was examined. Except reporter on behalf

of petitioner - Corporation, no other witness was examined. Thereafter, respondent was examined in departmental inquiry. Ultimately, by order dated 28th July,1995, punishment order was passed by Divisional Traffic Officer imposing punishment of stoppage of five increments with cumulative effect. Respondent workman has filed purshish that he is not challenging the legality and validity of departmental inquiry but, he kept open his contention about finding which is baseless and perverse. No oral evidence led by either side before the Industrial Tribunal. The petitioner has produced documentary evidence before Industrial Tribunal and thereafter, Industrial Tribunal has considered the issue whether finding given by Inquiry Officer is baseless or preserve or not and whether the misconduct levelled against respondent – workman is found to be proved and punishment order is legal or not. In view of the issues framed by Industrial Tribunal and considering the arguments

of both learned Advocates, Industrial Tribunal has come to conclusion that Divisional Traffic Officer, Valsad was a competent authority under disciplin appeal procedure. Even the accident Form No.5 when report was submitted to Divisional Traffic Officer, the very same officer was having the opinion and agreed with the report submitted by reporter that driver is responsible for the accident. The same Officer has issued charge-sheet and also punishment order. Therefore, Industrial Tribunal has considered that before holding departmental inquiry or even before issuing charge-sheet, the competent authority has already determined its mind and it is a clear case of bias against respondent that respondent workman is responsible for the accident. The Industrial Tribunal further observed that similarly in appeal also, Divisional Controller, who is Appellate Authority, also having opinion and agreement with reporter that driver is responsible and rejected the appeal. In

departmental inquiry, no eye witness was examined and reporter, who was not eye witness. Therefore, it cannot be considered to be a legal evidence led in departmental inquiry. Except reporter, no other person was examined in departmental inquiry. Even conductor was also not examined who was eye witness. Therefore, considering this fact, Industrial Tribunal has come to conclusion that finding is not based upon legal evidence and that is how it is baseless and perverse and, therefore, order of punishment is set aside by Tribunal. The Tribunal has also come to conclusion that both the authorities Competent as well as Appellate Authority have not applied mind while passing such order. Therefore, considering these observations made by Industrial Tribunal, which is based on record, according to my opinion, Industrial Tribunal has rightly set aside punishment order. For that, Tribunal having jurisdiction after the reference is referred for adjudication by appropriate authority. The

Tribunal has not committed any error which require any interference by this Court while exercising power under Article 227 of the Constitution of India. Learned Advocate, Ms.F.D.Patel, is not able to pointed out any infirmity in the award. Therefore, there is no substance in present petition. Hence, present petition is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

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